S T A T E  O F  N E W  Y O R K

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2013-2014 Regular Sessions

I N  A S S E M B L Y

January 23, 2013

Introduced by M. of A. ROSENTHAL, CORWIN -- Multi-Sponsored by -- M. of A. RABBITT -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to prohibiting bullying on school property

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative intent. In recent years, New York has taken steps to ensure that school pupils, teachers and other personnel are provided with a safe and secure learning environment. However, egregious incidents of bullying, both in person and through the use of technology, continue to plague all of our students. The legislature recognizes that bullying manifests in many forms and for innumerable reasons. The legislature finds it is vital to protect all students from acts of bullying, therefore, this legislation expands upon the provisions of chapter 482 of the laws of 2010.

While the physical wounds may heal, the effects of bullying can last a lifetime. Therefore, the legislature finds that prohibiting bullying is an appropriate means to enhance the safety of students in New York state's public schools. Furthermore, in today's age of advanced technology, twenty-four hour connectivity and social networking, students who are subjected to acts of bullying have no reprieve. Taunts and acts of bullying that begin in school follow students home every day, and have lasting impacts on such students. Conversely, bullying through the use of technology can begin away from school property, yet have devastating effects on the student's ability to learn in a safe environment at school. While bullying through the use of technology may occur away from school property, it can create a hostile environment for the student at school and it can materially and substantially disrupt the educational process. Therefore, to further ensure the safety of students and school employees, it is the intent of the legislature to provide schools with

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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the tools to identify, prevent, and prohibit bullying against all students, both conventional and cyber-bullying.

S 2. Short title. This act shall be known and may be cited as the "Law to Encourage the Acceptance of All Differences (LEAD)".

S 3. Section 801-a of the education law, as amended by chapter 102 of the laws of 2012, is amended to read as follows:

S 801-a. Instruction in civility, citizenship and character education. The regents shall ensure that the course of instruction in grades kindergarten through twelve includes a component on civility, citizenship and character education. Such component shall instruct students on the principles of honesty, tolerance, personal responsibility, respect for others, with an emphasis on discouraging acts of [harassment,] bullying AS DEFINED IN SECTION ELEVEN OF THIS CHAPTER, discrimination, observance of laws and rules, courtesy, dignity and other traits which will enhance the quality of their experiences in, and contributions to, the community. Such component shall include instruction of safe, responsible use of the internet and electronic communications. The regents shall determine how to incorporate such component in existing curricula and the commissioner shall promulgate any regulations needed to carry out such determination of the regents. For the purposes of this section, "tolerance," "respect for others" and "dignity" shall include awareness and sensitivity [to harassment, bullying, discrimination and civility in the relations of] TOWARD ALL STUDENTS, INCLUDING BUT NOT LIMITED TO, people of different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, genders, and sexes.

S 4. Paragraph d of subdivision 2 of section 2801 of the education law, as added by chapter 181 of the laws of 2000, is amended to read as follows:

d. disciplinary measures to be taken in incidents involving the possession or use of illegal substances or weapons, the use of physical force, BULLYING, vandalism, violation of another student's civil rights and threats of violence;

S 5. Subdivision 2 of section 2801 of the education law is amended by adding a new paragraph f-1 to read as follows:

F-1. PROCEDURES BY WHICH ANY SCHOOL EMPLOYEE, HAVING REASONABLE CAUSE TO SUSPECT THAT A STUDENT HAS BEEN THE VICTIM OF BULLYING OR HAS COMMITTED AN ACT OF BULLYING AS DEFINED IN SECTION ELEVEN OF THIS CHAPTER, SHALL BE REQUIRED TO REPORT SUCH INCIDENT TO THE PRINCIPAL OR DESIGNEE THEREOF. IF THE PRINCIPAL OR HIS OR HER DESIGNEE DETERMINES THAT THERE IS A REASONABLE CAUSE TO BELIEVE THAT THE INCIDENT OCCURRED, HE OR SHE SHALL REPORT SUCH INCIDENT TO THE SUPERINTENDENT. ANY EMPLOYEE WHO REASONABLY AND IN GOOD FAITH MAKES A REPORT OF AN ACT OF BULLYING TO THE PRINCIPAL OR DESIGNEE THEREOF SHALL HAVE IMMUNITY FROM CIVIL LIABILITY WHICH MIGHT OTHERWISE RESULT BY REASON OF SUCH ACTIONS;

S 6. Section 11 of the education law, as added by chapter 482 of the laws of 2010, subdivision 7 as amended and subdivision 8 as added by chapter 102 of the laws of 2012, is amended to read as follows:

S 11. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "School property" shall [mean in or within any building, structure, athletic playing field, playground, parking lot, or land contained within the real property boundary line of a public elementary or secondary school; or in or on a school bus, as defined in section one hundred forty-two of the vehicle and traffic law.

2. "School function" shall mean a school-sponsored extra-curricular event or activity] HAVE THE SAME MEANING AS SET FORTH IN SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER.

[3.] 2. "Disability" shall mean disability as defined in subdivision twenty-one of section two hundred ninety-two of the executive law.

[4. "Employee" shall mean employee as defined in subdivision three of section eleven hundred twenty-five of this title.

5.] 3. "Sexual orientation" shall mean actual or perceived heterosexuality, homosexuality or bisexuality.

[6.] 4. "Gender" shall mean actual or perceived sex and shall include a person's gender identity or expression.

[7. "Harassment" and "bullying" shall mean the creation] 5. "CREATION of a hostile environment [by]" SHALL MEAN ENGAGING IN conduct or [by] threats, intimidation or abuse, including cyberbullying, that (a) has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional or physical well-being; or (b) reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety; or (c) reasonably causes or would reasonably be expected to cause physical injury or emotional harm to a student; or (d) occurs off school property and creates or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach school property. [Acts of harassment and bullying shall include, but not be limited to, those acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.] For the purposes of this definition the term "threats, intimidation or abuse" shall include verbal and non-verbal actions.

6. "BULLYING" SHALL MEAN THE SEVERE OR REPEATED USE BY ONE OR MORE STUDENTS OR SCHOOL EMPLOYEES OF A WRITTEN, VERBAL OR ELECTRONIC EXPRESSION, OR A PHYSICAL ACT OR GESTURE, OR ANY COMBINATION THEREOF, DIRECTED AT A STUDENT THAT HAS THE EFFECT OF CREATING A HOSTILE ENVIRONMENT. ACTS OF BULLYING SHALL INCLUDE, BUT NOT BE LIMITED TO, THOSE ACTS WHICH ARE MOTIVATED BY A STUDENT'S ACTUAL OR PERCEIVED RACE, COLOR, WEIGHT, NATIONAL ORIGIN, ETHNIC GROUP, RELIGION, RELIGIOUS PRACTICE, DISABILITY, SEXUAL ORIENTATION, GENDER, OR SEX.

[8.] 7. "Cyberbullying" shall mean [harassment or] bullying as defined in subdivision [seven] SIX of this section[, including paragraphs (a), (b), (c) and (d) of such subdivision,] where such [harassment or] bullying occurs through any form of electronic communication.

S 7. Section 12 of the education law, as added by chapter 482 of the laws of 2010, subdivision 1 as amended by chapter 102 of the laws of 2012, is amended to read as follows:

S 12. [Discrimination and harassment] BULLYING AND DISCRIMINATION prohibited. 1. No student shall be subjected to [harassment or] bullying by employees or students on school property [or at a school function; nor shall any].

A. NO STUDENT OR SCHOOL EMPLOYEE SHALL SUBJECT ANY STUDENT OF A PUBLIC SCHOOL OR PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM TO BULLYING AS DEFINED IN THIS ARTICLE.

B. ANY STUDENT OR SCHOOL EMPLOYEE FOUND TO BE IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION IN A PUBLIC SCHOOL OR ON SCHOOL PROPERTY SHALL BE SUBJECT TO DISCIPLINARY ACTION IN ACCORDANCE WITH THE DISTRICT'S CODE OF CONDUCT ADOPTED PURSUANT TO SECTION TWENTY-EIGHT HUNDRED ONE OF THIS ARTICLE AND THE APPLICABLE DISCIPLINE PROCEDURES. ANY STUDENT OR SCHOOL

EMPLOYEE FOUND TO BE IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION IN A PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM SHALL BE SUBJECT TO DISCIPLINE UNDER THE POLICIES AND PROCEDURES OF SUCH PROGRAM GOVERNING CONDUCT.

C. NOTHING IN THIS SECTION SHALL APPLY, OR BE CONSTRUED TO APPLY, TO PRIVATE, RELIGIOUS OR DENOMINATIONAL EDUCATIONAL INSTITUTIONS. NOR SHALL THIS SECTION PRECLUDE OR LIMIT, OR BE PERCEIVED TO PRECLUDE OR LIMIT, ANY RIGHT OR CAUSE OF ACTION PROVIDED UNDER ANY LOCAL, STATE OR FEDERAL ORDINANCE, LAW, RULE OR REGULATION.

2. NO student SHALL be subjected to discrimination based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex by school employees or students on school property or at a school function. Nothing in this subdivision shall be construed to prohibit a denial of admission into, or exclusion from, a course of instruction based on a person's gender that would be permissible under section thirty-two hundred one-a or paragraph (a) of subdivision two of section twenty-eight hundred fifty-four of this chapter and title IX of the Education Amendments of 1972 (20 U.S.C. section 1681, et. seq.), or to prohibit, as discrimination based on disability, actions that would be permissible under section 504 of the Rehabilitation Act of 1973.

[2. An age-appropriate version of the policy outlined in subdivision one of this section, written in plain-language, shall be included in the code of conduct adopted by boards of education and the trustees or sole trustee pursuant to section twenty-eight hundred one of this chapter and a summary of such policy shall be included in any summaries required by such section twenty-eight hundred one.]

S 8. Section 13 of the education law, as amended by chapter 102 of the laws of 2012, is amended to read as follows:

S 13. Policies and guidelines. The board of education and the trustees or sole trustee of every school district shall create policies, procedures and guidelines that shall include, but not be limited to:

1. Policies and procedures intended to create a school environment that is free from [harassment,] bullying and discrimination, that include but are not limited to provisions which:

a. identify the principal, superintendent or the principal's or superintendent's designee as the school employee charged with receiving reports of [harassment,] bullying and discrimination;

b. enable students and parents to make an oral or written report of [harassment,] bullying or discrimination to teachers, administrators and other school personnel that the school district deems appropriate;

c. require school employees who witness [harassment,] bullying or discrimination, or receive an oral or written report of [harassment,] bullying or discrimination, to promptly orally notify the principal, superintendent or the principal's or superintendent's designee not later than one school day after such school employee witnesses or receives a report of [harassment,] bullying or discrimination, and to file a written report with the principal, superintendent or the principal or superintendent's designee not later than two school days after making such oral report;

d. require the principal, superintendent or the principal's or superintendent's designee to lead or supervise the thorough investigation of all reports of [harassment,] bullying and discrimination, and to ensure that such investigation is completed promptly after receipt of any written reports made under this section;

e. require the school, when an investigation reveals any such verified [harassment,] bullying or discrimination, to take prompt actions reasonably calculated to end the [harassment,] bullying or discrimination, eliminate any hostile environment, create a more positive school culture and climate, prevent recurrence of the behavior, and ensure the safety of the student or students against whom such [harassment,] bullying or discrimination was directed. Such actions shall be consistent with the guidelines created pursuant to subdivision four of this section;

f. prohibit retaliation against any individual who, in good faith, reports, or assists in the investigation of, [harassment,] bullying or discrimination;

g. include a school strategy to prevent [harassment,] bullying and discrimination;

h. require the principal to make a regular report on data and trends related to [harassment,] bullying and discrimination to the superintendent;

i. require the principal, superintendent or the principal's or superintendent's designee, to notify promptly the appropriate local law enforcement agency when such principal, superintendent or the principal's or superintendent's designee, believes that any [harassment,] bullying or discrimination constitutes criminal conduct;

j. include appropriate references to the provisions of the school district's code of conduct adopted pursuant to section twenty-eight hundred one of this chapter that are relevant to [harassment,] bullying and discrimination;

k. require each school, at least once during each school year, to provide all school employees, students and parents with a written or electronic copy of the school district's policies created pursuant to this section, or a plain-language summary thereof, including notification of the process by which students, parents and school employees may report [harassment,] bullying and discrimination. This subdivision shall not be construed to require additional distribution of such policies and guidelines if they are otherwise distributed to school employees, students and parents;

l. maintain current versions of the school district's policies created pursuant to this section on the school district's internet website, if one exists;

2. Guidelines to be used in school training programs to discourage the development of [harassment,] bullying and discrimination, and to make school employees aware of the effects of [harassment,] bullying, cyberbullying and discrimination on students and that are designed:

a. to raise the awareness and sensitivity of school employees to potential [harassment,] bullying and discrimination, and

b. to enable employees to prevent and respond to [harassment,] bullying and discrimination; and

3. Guidelines relating to the development of nondiscriminatory instructional and counseling methods, and requiring that at least one staff member at every school be thoroughly trained to handle human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, and sex; and

4. Guidelines relating to the development of measured, balanced and age-appropriate responses to instances of [harassment,] bullying or discrimination by students, with remedies and procedures following a progressive model that make appropriate use of intervention, discipline and education, vary in method according to the nature of the behavior,

the developmental age of the student and the student's history of problem behaviors, and are consistent with the district's code of conduct; and

5. Training required by this section shall address the social patterns of [harassment,] bullying and discrimination, as defined in section eleven of this article, including but not limited to those acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex, the identification and mitigation of [harassment,] bullying and discrimination, and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings.

S 9. Section 14 of the education law, as amended by chapter 102 of the laws of 2012, is amended to read as follows:

S 14. Commissioner's responsibilities. The commissioner shall:

1. Provide direction, which may include development of model policies and, to the extent possible, direct services, to school districts related to preventing [harassment,] bullying and discrimination and to fostering an environment in every school where all children can learn free of manifestations of bias;

2. Provide grants, from funds appropriated for such purpose, to local school districts to assist them in implementing the guidelines set forth in this section;

3. Promulgate regulations to assist school districts in implementing this article including, but not limited to, regulations to assist school districts in developing measured, balanced, and age-appropriate responses to violations of this policy, with remedies and procedures following a progressive model that make appropriate use of intervention, discipline and education and provide guidance related to the application of regulations; and

4. Provide guidance and educational materials to school districts related to best practices in addressing cyberbullying and helping families and communities work cooperatively with schools in addressing cyberbullying, whether on or off school property or at or away from a school function.

5. The commissioner shall prescribe regulations that school professionals applying on or after July first, two thousand thirteen for a certificate or license, including but not limited to a certificate or license valid for service as a classroom teacher, school counselor, school psychologist, school social worker, school administrator or supervisor or superintendent of schools shall, in addition to all other certification or licensing requirements, have completed training on the social patterns of [harassment,] bullying and discrimination, as defined in section eleven of this article, including but not limited to those acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex, the identification and mitigation of [harassment,] bullying and discrimination, and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings.

S 10. Section 15 of the education law, as amended by chapter 102 of the laws of 2012, is amended to read as follows:

S 15. Reporting by commissioner. The commissioner shall create a procedure under which material incidents of [harassment,] bullying and discrimination on school [grounds or at a school function] PROPERTY, AS SUCH TERM IS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAP-

TER, are reported to the department at least on an annual basis. Such procedure shall provide that such reports shall, wherever possible, also delineate the specific nature of such incidents of [harassment,] bullying and discrimination, provided that the commissioner may comply with the requirements of this section through use of the existing uniform violent incident reporting system. In addition the department may conduct research or undertake studies to determine compliance throughout the state with the provisions of this article.

S 11. Section 16 of the education law, as amended by chapter 102 of the laws of 2012, is amended to read as follows:

S 16. Protection of people who report [harassment,] bullying or discrimination. Any person having reasonable cause to suspect that a student has been subjected to [harassment,] bullying or discrimination, by an employee or student, on school [grounds or at a school function] PROPERTY, AS SUCH TERM IS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER, who, acting reasonably and in good faith, reports such information to school officials, to the commissioner or to law enforcement authorities, acts in compliance with paragraph e or i of subdivision one of section thirteen of this article, or otherwise initiates, testifies, participates or assists in any formal or informal proceedings under this article, shall have immunity from any civil liability that may arise from the making of such report or from initiating, testifying, participating or assisting in such formal or informal proceedings, and no school district or employee shall take, request or cause a retaliatory action against any such person who, acting reasonably and in good faith, either makes such a report or initiates, testifies, participates or assists in such formal or informal proceedings.

S 12. This act shall take effect on the same date and in the same manner as chapter 102 of the laws of 2012, takes effect.